

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MATTHEW WASHINGTON,

Petitioner,

v.

WARDEN WILLIAM GITTERE, et al.,

Respondents.

Case No. 2:19-cv-00614-RFB-BNW

ORDER

In August 2020, the Court granted 28 U.S.C. § 2254 habeas corpus petitioner Matthew Washington's motion to stay this case while he concluded his investigation of potential claims. (ECF No. 30.) The Court granted a stay due to the COVID-19 pandemic and attendant Nevada Department of Corrections restrictions, including on visitation. Washington now moves the Court to reopen this stayed case for the limited purpose of filing a second-amended petition and supporting exhibits. (ECF No. 35.) Washington otherwise asks the Court to keep the federal case closed while he returns to state court to exhaust new grounds for relief. Respondents do not oppose. (ECF No. 38.)

The Court grants Washington's motion. Respondents are correct that this case will now be stayed pursuant to Rhines v. Weber rather than due to the COVID-19 pandemic. See 544 U.S. 269, 278 (2005) (providing that a petitioner must demonstrate

1 “good cause for his failure to exhaust, his unexhausted claims are potentially
2 meritorious, and there is no indication that the petitioner engaged in intentionally dilatory
3 litigation tactics”). Respondents also note that their non-opposition should not be
4 construed as a waiver of any potential defenses.

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6 **IT IS THEREFORE ORDERED** that Petitioner’s Motion to Reopen this action
7 (ECF No. 35) is **GRANTED**.

8 **IT IS FURTHER ORDERED** that the Clerk of Court is directed to **REOPEN THE**
9 **FILE** in this action nunc pro tunc to September 27, 2022, the date on which the second-
10 amended petition was filed.

11 **IT IS FURTHER ORDERED** that the Clerk then administratively **RE-CLOSE** this
12 action, until such time as the Court grants a motion to reopen the matter.

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14 **IT IS FURTHER ORDERED** that the grant of a stay is conditioned upon
15 Petitioner returning to federal court with a motion to reopen the case within **45 days** of
16 the issuance of the remittitur by the state appellate court at the conclusion of the state
17 court proceedings on the postconviction habeas petition.

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22 DATED: 28 August 2023.

A handwritten signature in black ink, appearing to be 'RFB', is written above a horizontal line.

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24 RICHARD F. BOULWARE, II
25 UNITED STATES DISTRICT JUDGE
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